IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.529 OF 2003
IN
WRIT PETITION NO.1530 OF 2003

M/s.Influence, New Delhi.....Petitioner

Versus

Shri Suresh Gandhi .....Respondent
Mr. P.K. Rele, Sernior Counsel with Mr. Piyush Shah, for the Petitioner.
Mr. N.M. Ganguli, for the Respondent.

CORAM: F.I. REBELLO, J.
DATE : 24th September,2004

P.C.:

1. Heard learned Counsel for the parties. On behalf of the petitioner learned Counsel contends that the respondent was never in the employment. Apart from that they have no post to offer the respondent in Mumbai and they are willing to offer the respondent a job at Delhi. In the alternative it is pointed out that from the admission of the respondent himself in his evidence the last drawn wages in Mumbai is Rs.2051/-.

2. On the other hand on behalf of the respondent learned Counsel points out that once the petitioner moved for stay of the order of reinstatement and this Court has been pleased to grant that relief in favour of the petitioners the right of the respondent to move an application under Section 17B arose and consequently the application filed by him is maintainable. It is then pointed out that though earlier the petitioner was working with Wings Wear Pvt. Ltd., his services came to be transferred to M/s.Influence. The finding of the Tribunal is that he was drawing salary of Rs.3759/- and that would be the last drawn salary to which he would be entitled to.

3. Heard learned Counsel. The issue is whether the Respondent is entitled to the relief as prayed for herein. Considering Section 17B of the I.D. Act once the employer

applies for stay of reinstatement and the stay has been granted the right of the respondent to apply would be under Section 17B, but subject to the other requirements such as filing affidavit disclosing that otherwise he is not employed. In this case there is no material to show that the respondent is otherwise employed. The offer of the petitioner offering him employment at Delhi at present does not arise considering the interim order granted by this Court on 7th July, 2003 which has been subsequently confirmed. The application by the respondent under Section 17B is maintainable.

4. The next question is in respect of the wages last drawn. Admittedly according to the respondent himself when he was employed with M/s.Wings Wear Private Limited the salary drawn by him was Rs.2051/-. It is his case that he was transferred to petitioner he was surprised to receive an increase of Rs.1000/- per month. The petitioner has disclosed what was his salary. At any rate considering the case of the respondent that when he was employed with M/s.Wings Wear Pvt. Ltd. he was drawing salary ar the rate of Rs.2051/- and he was thereafter transferred to the petitioner herein the last drawn salary of the respondent would prima facie be Rs.2051/- per month. In the light of that the following order:-

(1) The application is partly made absolute in terms of prayer clause (a). However, the last drawn wages to be calculated at the rate of Rs.2051/- per month. Application stands disposed of accordingly.

(F.I.REBELLO, J.)